

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 88-01629

LIS No. 25-058

EMERY SAPP & SONS, INC.  
-FORT SMITH FACILITY  
7851 U.S. HIGHWAY 71 S  
FORT SMITH, ARKANSAS 72908

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Department of Energy and Environment, Pollution Control and Ecology Commission (PC&EC) Rule 7, now codified at 8 CAR § 10-101 *et seq.*, PC&EC Rule 8 (8 CAR § 11-101 *et seq.*), PC&EC Rule 18 (8 CAR § 40-101 *et seq.*), and PC&EC Rule 19 (8 CAR § 41-101 *et seq.*).

The issues herein having been settled by agreement of Emery Sapp & Sons, Inc. - Fort Smith Facility (Respondent) and the Director of the Division of Environmental Quality (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates an asphalt paving mixture and block manufacturing facility located at 7851 U.S. Highway 71 S in Fort Smith, Sebastian County, Arkansas.
2. The air permit referenced in this CAO is the General Air Permit for Minor Source Hot

Mix Asphalt Facilities 1912-AGP-000 (the Permit). Respondent is assigned Tracking No. 1912-AGP-113, which indicates authority to operate under the Permit. Respondent's authority to operate under the Permit was granted on September 13, 2021.

3. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by DEQ;

4. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, "Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation."

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

6. On May 8, 2024, DEQ personnel conducted a routine compliance inspection of Respondent's facility. The reporting period for this inspection covered April 2023 through March 2024.

7. Specific Condition 18 of the Permit states Respondent shall test the asphalt plant exhaust stack for particulate matter (PM) and opacity every five (5) years. For units which have previously been tested, the testing shall be repeated within five (5) years of the most recent documented test. For each existing production unit which has not previously been tested, testing shall be performed within ninety (90) days of permit issuance. Testing of new units shall be completed within sixty (60) days of achieving the maximum production rate, but in no event greater

than 180 days from the initial start-up of the source.

8. General Condition 7 of the Permit states Respondent must submit compliance test results to DEQ within thirty (30) calendar days after the completion of testing.

9. Based upon records provided during the inspection, the initial start-up date for the Hot Mix Asphalt Baghouse Plant Stack (SN-01) was April 18, 2023. The initial emissions test should have been conducted on or before October 15, 2023. The initial emissions test occurred on May 8, 2024. Respondent failed to conduct the initial emissions test within 180 days of start-up. Such failures violate Specific Condition 18 and General Condition 7 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. Respondent also failed to provide the initial emissions test results to DEQ within thirty (30) calendar days of the emissions test. Such a failure violates General Condition 7 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In correspondence dated May 28, 2024, DEQ personnel informed Respondent of violations found during the inspection.

12. In correspondence dated June 8, 2024, Respondent stated they had repeatedly attempted to conduct the test prior to May 2024, but were unable to due to repeated weather delays.

13. In correspondence dated July 2, 2024, DEQ informed Respondent that formal enforcement action was proceeding regarding this matter.

14. On September 5, 2024, Respondent conducted a retest at SN-01 for PM. On September 20, 2024, Respondent submitted stack test results to DEQ personnel. In correspondence dated September 23, 2024, DEQ personnel informed Respondent that they had passed the stack test

which occurred on September 5, 2024.

15. On March 26, 2025, upon request by DEQ personnel, Respondent provided the results from the May 8, 2024 stack test; however, upon review of the results, it was determined no production rate data at the time of testing was provided.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations referenced in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **ONE THOUSAND DOLLARS (\$1,000.00)**, or one-half of the penalty, **FIVE HUNDRED DOLLARS (\$500.00)** if this CAO is signed and returned to Air Enforcement Program, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **July 17, 2025**. Payment is due within thirty (30) calendar days after the effective date of this CAO. Such payment shall be made payable to:

DEQ, Fiscal Services  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to

the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of DEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify DEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

6. DEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be

caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.

8. As provided by PC&EC Rule 8, now codified at 8 CAR § 11-101 *et seq.*, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 16 DAY OF JULY, 2025.

Bailey Taylor  
BAILEY TAYLOR  
CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ DIRECTOR  
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

EMERY SAPP & SONS, INC.  
-FORT SMITH FACILITY

BY: [Signature] (Signature)

Brandon Farr (Typed or printed name)

TITLE: Executive Vice President

DATE: 6/27/2025